

**NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION**

(Henry J. Tilford, Referee)

PARTIES TO DISPUTE:

AMERICAN TRAIN DISPATCHERS ASSOCIATION

MISSOURI-KANSAS-TEXAS LINES

STATEMENT OF CLAIM: (1) Claim of the American Train Dispatchers Association that the Missouri-Kansas-Texas Lines violated Article III of the Dispatchers' Agreement in effect on this property, dated June 19, 1937, as amended by Mediation Agreement (Case A-1122-A) dated March 14, 1942, when it failed and refused to pay Dispatcher J. W. Athy, Parsons, Kansas office, while relieving position of chief dispatcher, at rate of time and one-half dispatcher's rate for service performed on two regularly assigned rest days, September 13 and 20, 1943.

(2) Dispatcher Athy shall now be paid the difference between pro rata rate which he was paid and rate and one-half which he is entitled to under the provisions of Article III.

EMPLOYES' STATEMENT OF FACTS: Mr. J. W. Athy at the time this claim arose was a regularly assigned dispatcher in the Parsons office, with one rest day (Monday) each week assigned to his position.

On Friday, September 10, 1943, the carrier instructed Mr. Athy to go on the chief dispatcher's position, which position he was required to fill from Friday, September 10, to Thursday, September 23, 1943, inclusive, without allowing him his rest days (Monday) September 13 and 20. The carrier paid him the pro rata rate of the chief dispatcher position for each day's service performed on that position but failed and refused to pay him at rate and one-half for service performed on the rest days (Monday), September 13 and 20, assigned to his regularly assigned position as provided in Article III of the Dispatchers' Agreement, dated June 19, 1937, as amended by Mediation Agreement (Case A-1122-A), dated March 14, 1942.

This claim has been handled up to and including the highest officer designated by the carrier for that purpose, whose letter denying the claim is shown as Exhibit TD-1.

POSITION OF EMPLOYES: Article III (a) of Dispatchers' Agreement, dated June 19, 1937, has been amended by Item 3-(a), of Mediation Agreement dated March 14, 1942, which provides:

"3-(a) Effective April 1, 1942, each regularly assigned train dispatcher (and extra train dispatchers who perform six consecutive days' dispatching service) will be entitled and required to take one regularly assigned day off per week as a rest day, except when unavoidable emergency prevents furnishing relief. A regularly assigned train dispatcher required to perform service on the rest day assigned

coming under the working agreement only as such, when they are used on the Chief Dispatcher position, which position it is clearly and unmistakably established is not included in the scope of or subject to any provisions on the working agreement between this petitioner and the railroad.

Except as herein expressly admitted, the carrier denies the allegation of the employes and respectfully requests that the petitioner be placed on strict proof of his allegations.

The carrier respectfully requests that the Board deny the claim.

OPINION OF BOARD: The facts in this case are undisputed, and its resolution necessarily depends upon the proper interpretation of the following provision of Article 3 (a) of the Dispatchers' Agreement of June 19, 1937, as amended by the Mediation Agreement of March 14, 1942:

"A regularly assigned train dispatcher required to perform service on the rest day assigned to his position will be paid at rate of time and one-half."

According to its literal import a regularly assigned dispatcher is entitled to time and one-half for any work which he may be required to perform for the carrier on any of his regularly assigned days of rest.

To escape the effect of such a construction, the Carrier advances two main contentions. The first of which is that the position of Chief Train Dispatcher is not within the scope of the Agreement, and hence is not subject to its terms. The Petitioner disputes this contention of the Carrier principally because of the provision of the second paragraph of Section C, Article 3 of the Dispatchers' Agreement of 1937, which provides that each dispatching position, including that of Chief Train Dispatcher, shall constitute a relief requirement. But it is not necessary to discuss this question since, conceding that the Chief Dispatcher, whose position the Claimant was required to fill, was an official and that the position was not within the scope of the Agreement, it does not follow that Claimant acquired the position of Chief Train Dispatcher by temporarily performing the duties of that office during the absence of its incumbent. The construction contended for by the Carrier implies the concept that a regularly assigned train dispatcher without relinquishing his status as such may, by the act of the Carrier, be deprived of the protection which the Dispatchers' Agreement affords him. We find nothing in the Agreement to support this concept or its corollary namely, that of a regularly assigned train dispatcher temporarily performing the duties of a Chief Dispatcher is entitled only to the emoluments incident to the latter position notwithstanding a provision of the Agreement to the contrary.

The facts set forth in the Carrier's Statement of its position tend strongly to support its contention that its understanding of Article 3 (a) was that the above quoted provision of that Article did not apply when the work required of a train dispatcher on his regularly assigned rest day was that of the Chief Dispatcher. But its understanding cannot prevail against the clear and unambiguous language of the Agreement in the absence of a showing that its understanding was acquiesced in by the other party. The fact that a literal application of the rule was not insisted upon in the settlement of previous claims presented on behalf of train dispatchers is not sufficient to justify us in reading into it an exception not clearly shown to have been omitted from the written memorial by mutual mistake.

FINDINGS: The Third Division of the Adjustment Board, after giving the parties to this dispute due notice of hearing thereon and upon the whole record and all the evidence finds and holds:

That the Carrier and the Employes involved in this ispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Division of the Adjustment Board has jurisdiction over the dispute involved herein; and

That the Carrier violated the Agreement.

AWARD

Claim sustained.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

ATTEST: H. A. Johnson,
Secretary.

Dated at Chicago, Illinois, this 4th day of May, 1945.